

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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In the Matter of Nebraska Resources	)	
Company, LLC, Tulsa, Oklahoma,	)	Docket No. NG-0053
Seeking a Certificate of Public Convenience	)	
And Necessity Authorizing it to Operate as a	)	
Jurisdictional Utility in Nebraska and Approval	)	
Of Tariff	)	

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### SUPPLEMENTAL INFORMATION

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At the planning conference convened by the Nebraska Public Service Commission (Commission) on March 3, 2008, in the above-referenced docket, a question arose as to the process and role of open houses and environmental review in the application of a pipeline operator seeking authority for certification and construction of a project, especially in reference to federal requirements and procedures. With its experience in working with the Federal Energy Regulatory Commission (FERC), Northern offered to provide a brief description of the federal process.

#### **FERC Environmental and Landowner Requirements**

For pipeline projects, FERC staff conducts an environmental review to identify and mitigate, to the extent possible, environmental and landowner impacts. Since these impacts are often not merely to the environment, but also to landowners, especially in agricultural or environmental sensitive areas (wetlands, e.g.), the process that the FERC uses is necessarily intertwined. For purposes of this discussion, we will assume the project in the instant application would be subject to an environmental assessment (EA).

A project of this size would be subject to an application made under section 7 of the federal Natural Gas Act (NGA). If the project were deemed to be a “major Federal action significantly affecting the quality of the human environment,”<sup>1</sup> FERC could require a more comprehensive, and arguably more onerous, Environmental Impact Statement (EIS) rather than an EA. Again, for purposes of this discussion, FERC would not likely require an EIS for this project, but would almost certainly require an EA.

The FERC conducts the EA, with some assistance from the applicant. The applicant provides initial resource reports and information on affected landowners.<sup>2</sup> The applicant is required to provide thirteen separate resource reports, titled as Resource Report 1, Resource Report 2, etc. A summary of the title of each report follows:<sup>3</sup>

- Resource Report 1 – General project description*
- Resource Report 2 – Water use and quality*
- Resource Report 3 – Vegetation and wildlife*
- Resource Report 4 – Cultural resources*
- Resource Report 5 – Socioeconomics*
- Resource Report 6 – Geological resources*
- Resource Report 7 – Soils*
- Resource Report 8 – Land use, recreation and aesthetics*
- Resource Report 9 – Air and noise quality*
- Resource Report 10 – Alternatives*
- Resource Report 11 – Reliability and safety*
- Resource Report 12 – PCB contamination*
- Resource Report 13 – Additional information related to LNG plants*

Although some of the reports can be completed with relative ease (and Resource

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<sup>1</sup> See 18 CFR § 380.6(b).

<sup>2</sup> An “affected landowner” has its own distinct definition in FERC regulations, See 18 CFR § 157.6(d)(2) and includes not only landowners through whose property the pipeline crosses, but also those landowners whose property merely “abuts” the land covered by the project. The landowner is identified by the names on the property tax records.

<sup>3</sup> Each report has its own individual requirements, each one detailed in the FERC regulations. See 18 CFR § 380.16. A synopsis of the contents of each report can be found in Appendix A to Part 380, “Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act.”

Report 13 generally does not apply), the FERC requires all reports to be filed in advance of their preparation of an EA. Just a brief review of the title of each report illustrates that FERC requires important and relevant information related to land impacts, especially land impacts to land used for agricultural purposes.

FERC regulations also provide that pipeline operators, in planning, siting, construction, locating and maintenance of the pipeline facilities, (1) avoid or minimize effects on scenic, historic, wildlife, and recreational area;<sup>4</sup> (2) take into account the desires of landowners;<sup>5</sup> (3) comply with safety regulations;<sup>6</sup> (4) avoid historical and natural landmarks, forested areas, steep slopes, and hills;<sup>7</sup> (5) take into account soil stability and protection of natural vegetation;<sup>8</sup> and (6) requires access roads be designed for proper drainage and built to minimize soil erosion.<sup>9</sup> There are other requirements that are not detailed here but can be found in the FERC regulations.

Construction is governed by the FERC's *Wetland and Waterbody Construction and Mitigation Procedures (Procedures)* and the FERC's *Upland Erosion Control, Revegetation and Maintenance Plan (Plan)*. These regulations are so ubiquitous that they are merely referred to as the FERC's Plan and Procedures. Incorporating these documents into the general conditions of the order authorizing construction is a short-hand method for employing a wide scope of regulations governing construction and includes, among others, regulations on the provision and scope of authority for environmental inspectors (commonly referred to as an EI), mechanisms for addressing agricultural drainage tile,

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<sup>4</sup> See 18 CFR § 380.15(a).

<sup>5</sup> See 18 CFR § 380.15(b).

<sup>6</sup> See 18 CFR § 380.15(c).

<sup>7</sup> See 18 CFR § 380.15(d)(2)(3)(6).

<sup>8</sup> See 18 CFR § 380.15(d)(5).

<sup>9</sup> See 18 CFR § 380.15(d)(11).

road crossings, and stormwater pollution prevention. The FERC Plan also contains regulations governing irrigation, topsoil segregation, erosion control, and remediation of disturbed land. The Procedures govern construction across wetlands and water bodies, such as streams, ponds, rivers, and other waterways.

### **Stakeholder Participation**

After the initial application, FERC will issue a Notice of Intent (NOI) to Prepare an Environmental Assessment (EA) as an integral part to their application review. The applicant is required to provide a listing<sup>10</sup> of all affected landowners and other stakeholders.<sup>11</sup> Project stakeholders are notified of the project scope and provided a map of the route of the proposed project. The NOI would also notify affected stakeholders of the “scoping meeting” that invites landowners and other stakeholders to a public meeting to voice their concerns, if any. The meeting is transcribed and made a part of the official record in the corresponding docket. The number of scoping meetings is dependent upon the magnitude of the scope of the project and the number is also determined to include major communities within the project footprint. FERC also invites stakeholders to file comments and concerns on the project. This scoping process provides a conduit for stakeholders to address their concerns and/or support of the project either in written form or at the public meeting(s) and provides a mechanism for FERC to address these concerns in the EA that will be completed at the end of this process (but prior to the issuance of an order).

For larger projects, the FERC strongly recommends that applicants employ the

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<sup>10</sup> For convenience, the applicant is usually asked to provide address labels.

<sup>11</sup> There is no federal definition of “stakeholder” but FERC has generally asked for affected landowners, public and elected officials within the project footprint, permitting agencies, and other known interested parties.

FERC's prefilings process which includes the requirement that the applicant submit a Public Participation Plan. This Plan must include landowner communications, a dedicated Web site, a single point-of-contact, and open houses (in addition to the scoping meeting) in the project area.<sup>12</sup>

During this process, FERC may issue requests for additional information to the applicant in the form of data requests. These requests result from FERC review of the documents submitted in the application as well as stakeholders' comments and questions. The process, which also includes comments from other environmental permitting agencies, concludes with the issuance of the order authorizing the project. The order will generally contain both standard conditions and project-specific conditions. One of the most specific and universal requirements directs the applicant to abide by the FERC Plan and Procedures (described above).<sup>13</sup> The FERC also generally requires applicants to establish an environmental complaint resolution process that allows landowners who experience inappropriate or improper land impacts, such as damaged drain tile, improper topsoil segregation and replacement, and inadequate land remediation and restoration, to name a few, to work first with the pipeline operator to remedy the problem, before filing a formal complaint to FERC. Such a procedure is a standard requirement imposed upon applicants that have received approval from FERC for a proposed project. The procedure includes a single point-of-contact, a specific resolution process and providing information to landowners who wish to file a complaint with the agency with the information needed to make that complaint.

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<sup>12</sup> See 18 CFR § 157.21(d)(11).

<sup>13</sup> The FERC Plans and Procedures can be found at <http://ferc.gov/industries/gas/enviro/guidelines.asp>

Compliance with the FERC regulations is enforced in numerous ways,<sup>14</sup> including on-site monitoring by the Environmental Inspector (EI).<sup>15</sup> The EI is trained and hired by the operator pursuant to FERC's Plan. The EI, by condition of the order issued by FERC, has work-stop authority. That is, the EI has the power to halt construction to protect land resources and to order remediation actions where the construction crew has violated a provision of a condition expressed in the order, a provision of the FERC Plans and Procedures, a condition of a granted permit, or state or federal law. Another enforcement mechanism is the requirement for the pipeline operator to file regular (generally, weekly or bi-weekly) reports with the FERC that details any issues of non-compliance identified by the EI, to report any unusual circumstances encountered during construction, to document corrective actions taken, and to report landowner complaints. Another enforcement mechanism employed by FERC is to conduct on-site inspections. These inspections may be announced or unannounced.

### **Conclusion**

This brief and summary descriptive of the FERC process outlines the basic requirements for a pipeline applicant. This description has focused only on the Commission's request for additional information on the FERC requirements and their intersection with stakeholder input. It should be pointed out that where FERC has

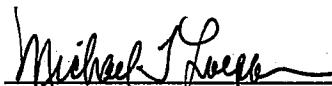
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<sup>14</sup> Other enforcement measures, not detailed here, include pre-construction environmental training of construction crews, the filing of plans by the operator detailing how the operator intends to implement the conditions of the order (Implementation Plan), and the requirement that the operator obtain specific authorization for construction, after regulatory review of site-specific plans, near wetlands, waterbodies, or cultural resources.

<sup>15</sup> Typically, the FERC provides the EI with responsibility for (1) monitoring and ensuring compliance with all mitigative measures required by the Order and other grants, permits, certificates, or other authorizing documents; (2) evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document; (3) correcting acts that violate the environmental conditions of the Order, and any other authorizing document; (4) documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and (5) maintaining status reports.

addressed “environmental” issues, they are including not only the limited focus on protection of endangered species; rather, FERC uses term loosely to include the broad concerns about construction of a pipeline and its effects on landowners and the impacts of construction and land disturbance on agricultural areas and upon affected wetlands and waterbodies. Although these requirements may seem extensive, the regulations outlined and summarized here do not complete a full review of the regulations promulgated by FERC over the construction of pipelines. Full compliance with these regulations, however, has, in Northern’s experience, mitigated and minimized post-construction complaints and has worked productively to address stakeholder concerns.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of March 2008, Comments of Northern Natural Gas Company on March 5 Order Regarding Proposed Schedule and Scope of Hearing was served upon the following by e-mail if applicable or regular U.S. Mail if applicable as follows:

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